

DOCS@RWU

Arts and Sciences

12-2019

Perceptions of just deserts in the context of type of offense

Kyle Gamache

Matt Zaitchik

Judith Platania

Follow this and additional works at: https://docs.rwu.edu/fcas_fp

 Part of the [Applied Behavior Analysis Commons](#)

PERCEPTIONS OF JUST DESERTS IN THE CONTEXT OF TYPE OF OFFENSE

**Kyle Gamache, M.A.,
Community College of Rhode Island**

**Matt C. Zaitchik, Ph.D.
Roger Williams University**

**Judith Platania, Ph.D.
Roger Williams University**

Danielle J. Rieger, M.A.

Preventive detention laws are intended to protect the community while providing continuing offender rehabilitation. The concept of preventive detention frequently challenges the notion of ‘just desert’. With respect to civil commitment, defendants are held involuntarily for treatment beyond their sentencing. In a criminal context, defendants may be held in lieu of a criminal conviction. In the current study, we assessed the public’s level of tolerance for preventive detention. We were interested in evaluating whether and to what extent a “crime hierarchy” exists for preventive detention; i.e., a perception that certain crimes are deserving of preventive detention compared to others. The results indicate that societal justifications for such confinement may stem from inherent perceptions of dangerousness rather than adherence to specific sentencing goals, political ideology, or criminal offense. This study’s findings suggest that the public is highly tolerant of the use of preventive detention, particularly with crimes viewed as abhorrent or dangerous.

Keywords: just deserts, preventive detention, civil commitment

Overview

The use of punishment in the criminal justice system is traditionally understood to meet three of the core goals of corrections: retribution for the damage inflicted on society, incapacitation to protect the public, and deterrence of criminal activity (Duff & Garland, 1994; Frost & Wellford, 1981; McKee & Feather, 2008; Tonry & Petersilia, 1999). Inherent in the retributive goal is the belief that punishment should be proportional to crime, referred to as just desert (Austin, 1979; Robinson, 2008; Tonry, 2011). In other words, sentencing should uphold the core goals of corrections and be appropriate to the crime committed (Cavadino & Dignan, 1997). In this vein, rehabilitation has also been offered as a corrections goal (Frost & Wellford, 1981; McKee & Feather, 2008). The expectation is that rehabilitation will reduce the risk posed by an offender, thus decreasing recidivism.

Author Note: Kyle Gamache, M.A., Community College of Rhode Island, kgamache1@ccri.edu; Matt C. Zaitchik, Ph.D., Roger Williams University, mzaitchik@rwu.edu; Judith Platania, Ph.D., Roger Williams University, jplatania@rwu.edu; and Danielle J. Rieger, M.A., danielle.rieger@gmail.com

Although each of these goals has received varied levels of public and professional support, very little research has focused on perceptions of punishment within the framework of just deserts. As a result, in the current study we empirically investigate public perceptions of the importance of rehabilitation and the value of incapacitation and public safety.

Background

The goal of incapacitation and the more utilitarian goal of rehabilitation intersect with the concept of preventive detention. In preventive detention, a person may be held involuntarily by the state without a crime being committed or following the completion of sentencing (Melton et al., 2017). The justification of this intervention falls under the philosophy of *parens patriae*, in which the state has an obligation to protect an individual if he or she has become a danger to themselves (Appelbaum, 1990; Lehman & Phelps, 2004). This obligation has been expanded to the state's "police power;" i.e., the state's obligation to protect its citizens from "dangerous people" (Janus, 2003; *Kansas v. Hendricks*, 1997). Preventive detention contrasts the idea of just desert as it is not retributive; rather it is concerned with risk potential within a criminal context (Slobogin, 2016). Such detention causes significant ethical issues because in some instances, an individual is detained without actually having committed a crime. The challenge to preventive detention is that the risk of future criminal acts does not meet the definition of crime, or satisfy the concept of just desert. The rationale for this position is that an individual's future acts based upon past criminal behavior cannot be determined with any certainty (Cole, 2014). Despite numerous legal challenges, preventive detention is utilized across the United States, Canada, and the United Kingdom and is found in both criminal and civil contexts.

The use of preventive detention in civil courts is typified in the involuntary commitment procedure for individuals with mental illness who are a significant risk to harm themselves or others (Appelbaum, 1990; Testa & West, 2010). This is also the case with defendants adjudicated as incompetent to stand trial or found not guilty by reason of mental illness. (Melton et al, 2017). Currently, the vast majority of states allow for involuntary civil commitment of the mentally ill and all but four have some legal option for diminished criminal responsibility due to mental illness (Callahan, Mayer, & Steadman, 1987; Robinson & Williams, 2018; Testa & West, 2010). Public opinion of mental illness has often led to the incorrect conclusion that individuals with mental illness are more dangerous to society compared to others (Phelan & Link, 1998). With this in mind, preventive detention exists in some states for persons experiencing severe substance use issues, allowing for the involuntary commitment of such individuals for treatment (Christopher, Pinals, Stayton, Sanders, & Blumberg, 2015). Preventive detention has also been used to quarantine individuals carrying infectious diseases (Public Health Service Act, 1944). In these cases, the goal of detention is two-fold: protection of society as well as the individual (Christopher, et al., 2015; Testa & West, 2010).

In some cases of preventive detention, the goal of rehabilitation is secondary to the goal of incapacitation. The best example of this is found in the civil commitment of sex offenders, often identified as sexually violent persons (SVPs). Jurisdictions across the United States have laws allowing for the involuntary commitment of sex offenders deemed

dangerous to society. This includes persons who are mandated by the court into treatment following the completion of their sentence, as well as persons that are considered high risk for sexual violence (Janus, 2003). Although preventive detention of SVPs has often been legally challenged, it has consistently been ruled constitutional (Kansas v. Crane, 2003; Kansas v. Hendricks, 1997; United States v. Comstock, 2010). Similar preventive detention laws have been adopted by other countries, with several (including the United Kingdom and Canada) expanding these statutes to include any person convicted of a serious crime that is deemed to be a continued threat to society (Ashworth, 2005; Ashworth & Player, 2005; Bickle, 2008; Blais & Bonta, 2015; Criminal Justice Act 2003).

Preventive detention has also been utilized to detain “enemy combatants” during wartime, including United States citizens suspected of engaging in insurgency. Infamously applied during the Second World War, Executive Order 9066 (1942) allowed for the detainment and internment of over 100,000 American citizens of Japanese ancestry to prevent espionage activity. This practice, though challenged as grossly unconstitutional (Feldman, 2016), was upheld in *Korematsu v. United States* (1944). Although the United States government has since made a series apologies and reparations related to this internment, the Supreme Court ruling stands as precedent.

In response to terrorist threats against the United States, the Authorization for Use of Military Force Against Terrorists (AUMF, 2001) authorizes the President to use all “necessary and appropriate force” against terrorist groups and their associates. This was further expanded with the National Defense Authorization Act (NDAA) of 2012. NDAA allows for the indefinite military detention of persons suspected of terrorist activity, including United States citizens (Civic Impulse, 2018). Legal challenges to this part of the NDAA have been unsuccessful (*Hedges v. Obama*, 2013).

Issues Investigated

With respect to perceptions of punishment, research appears to converge on the notion of a “crime hierarchy,” with some crimes regarded by the public as requiring harsher punishment to satisfy desert compared to others (Robinson & Kurzban, 2007; Slobogin & Rubinstein, 2013). This crime hierarchy is modified both by extenuating circumstances and individual difference factors (Robinson & Kurzban, 2007; Slobogin & Brinkley-Rubinstein, 2013). There is support for the idea that the public rank-orders certain types of crimes; i.e., murder and robbery. However, individuals’ opinions vary on what specifically constitutes a just punishment for these crimes. For example, although participants in a study conducted by Slobogin and Brinkley-Rubinstein (2013) agreed on which crimes were the most severe, they varied significantly as to what punishment constituted just desert for these crimes.

Offenders who are viewed as being at risk of committing future violence are often treated differently than other offenders (Blume, Garvey, & Johnson, 2001; Costanzo & Costanzo, 1994; Garvey, 1998). With this in mind, certain crimes have a greater impact on the public’s perception of dangerousness and risk. Sexual offenses are often regarded as particularly dangerous and harmful to society, especially when considering risk toward children (Quinn, Forsyth, Mullen-Quinn, 2004; Socia & Harris, 2016). Though the recidi-

vism rates of even the highest risk sex offenders are much lower than the rates of other violent criminals (Bureau of Justice Statistics, 2003; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012; Sample & Bray, 2003, 2006; SMART Office, 2014), sex offenders are subject to a unique and wide range of punitive and preventive measures (LaFond, 2005).

Suspected terrorists also elicit disproportionate levels of fear in the public. Although the risk of injury or death due to terrorist attacks is low, the fear of such attacks has a powerful influence on the public (Kim, 2016; Sinclair & Antonius, 2012). The public perceives high vulnerability to terrorist attack, particularly in the aftermath of such events (Boscarino, Figler, Adams, 2003; Huddy, Khatib, & Capelos, 2002). Measures of public perception also point to strong support for counter-terrorist policies (Huddy, Feldman, Taber, Lahav, 2005; Kim, 2016). In the context of punishment, research demonstrates that this fear of future terrorist actions triggers greater public outrage compared to other crimes, and increases public support of more punitive action against individuals suspected of terrorist activity (Skitka, Bauman, & Mullen, 2004). It appears that the public views sex offenses and terrorist actions as uniquely dangerous crimes requiring special intervention.

In the current study we also examine the impact of individual differences on assessments of preventive detention related to these types of offenses. Research has found that individuals with conservative views are significantly more retributive compared to those with more liberal views (Carroll, Perkowitz, Lurigio, & Weaver, 1987; Payne, Gainey, Triplett, & Danner, 2004; Silver & Silver, 2017; Tyler & Boeckmann, 1997). Conservative individuals also endorse longer sentences and greater support for the death penalty (Carroll et al., 1987; Grasmick, Davenport, Chamlin, & Bursik, 1992; Unnever & Cullen, 2007, 2009). However, limited research has been conducted on the effect of personal ideology on opinions of preventive detention. In addition we investigate humanistic and normativistic perspectives within the context of perceptions of preventive detention (Tompkins, 1963). These perspectives develop throughout a person's lifetime and profoundly instruct one's personal ideology. The notion is that humanistic-oriented individuals possess positive worldviews, generally believing that humans are inherently good. Normativistic oriented individuals, on the other hand, hold negative, pessimistic worldviews and believe that human nature is innately evil. These conceptual viewpoints influence individuals' political, moral, and ethical outlooks (Graham, Haidt, & Nosek, 2009; Stone & Schaffner, 1997; Tompkins, 1963, 1965). In addition, research has found that individuals who report being more humanistic tend to find liberal (left-wing) ideas more agreeable and are more open and expressive. In contrast, those who score higher on normativism will find conservative (right-wing) ideas more agreeable and hold more conventional ideals (Stone, 1986). We suspect that these world-views would influence a person's opinion of what constitutes "just deserts" as well as their acceptance of preventive detention.

Finally, in the current study we examine the impact of sentencing goals on views about preventive detention. Researchers agree that the goal of just retribution is central to most punishment strategies employed by jurors and legal experts alike (Darley & Pittman,

2003; Hogan & Emler, 1981). With this in mind, we were interested in exploring how the importance of sentencing goals guide participant attitudes regarding preventive detention.

The Current Study

In the current study we investigate the public's acceptance of preventive detention through three prisms. First, the effect of type of offense on perceptions of preventive detention is explored. Researchers have found that in a retributive desert-based framework, crimes like murder, sexual offending, and robbery are clearly regarded as crimes that deserve the harshest punishment (Robinson & Kurzban, 2007; Slobogin & Brinkley-Rubinstein, 2013). There has been minimal investigation however, of the public's attitudes toward preventive detention of people charged with these types of offenses. Specifically, an exploration into the public's tolerance for detainment related to risk (i.e., what an individual might do) is important to the application of corrections. Second, the effect of world-view on the perception of preventive detention is explored. Significant research has investigated personal ideology on sentencing (Carroll et al., 1987; Grasmick et al., 1992; Unnever & Cullen, 2007, 2009) but little research has been conducted on the relation between ideology and preventive detention. Finally, the effect of participant perspectives of sentencing goals on their opinions of preventive detention is explored.

The current study investigates public acceptance of non-criminal preventive detention in connection with five types of offenses: terrorism, possession of child pornography, bank robbery, drunken driving, and disorderly conduct. The five scenarios used in our research are presented in the Appendix. The last sentence in each scenario was designed to make clear that the detention will not be linked to the person's crime, but rather solely to the incapacitative goal of protecting the public.

Our specific hypotheses were as follows:

H1: Given previous research indicating that desert plays a significant role in determining who should be deprived of liberty, we expected that desert would play a strong role in individuals' assessments of dangerousness. We expect that public perception of dangerousness would affect how individuals perceive crime and, due to the public fear of terrorism and moral outrage of sex crimes, we hypothesize that participants would rank terrorists first and sex offenders second, with the disorderly conduct crime ranked lower than the remaining two.

H2: Given societal views of sex crimes as particularly heinous and abhorrent and resistant to treatment (Quinn et al., 2004), we expect preventive detention to be perceived as the most reasonable disposition for the sex offender compared to the other types of crimes, despite our sex offense scenario portrayed as a low risk, non-contact crime.

H3 and H4: Participants who score high on the Right-Wing Polarity Scale will indicate just deserts as a greater justification for preventive confinement compared to individuals with high scores on the Left-Wing Polarity Scale. Participants who score high on retributive justice in the Justice Goals Scale will indicate just deserts as a greater justification for preventive confinement compared to individuals with high scores on other facets of the Justice Goals Scale.

METHOD

Participants

Two hundred twenty-eight adult participants were recruited via Amazon Mechanical Turk. After eliminating participants who did not reside in the US, our sample consisted of 202 individuals (100 female, 98 male, 4 preferred not to reply). Thirty-seven percent were between 18-34, 36% between 35-54, 45% between 45-64. Eighty percent were White, 39% reported having a college degree. Sixty-five percent were employed full-time. Fifty-four percent indicated liberal to slightly liberal political views and 45% reported conservative to slightly conservative. The majority of our sample (80-83%) indicated not serving on a jury and never called to testify in court. All but 6% reported no experience in the mental health field and all but 10% indicated they did not have any family members or friends in the mental health field. At the completion of the study, all participants were thanked and debriefed and compensated 0.40, placed on their MTurk account.

Materials and Procedure

Participation took place via the online platform of Qualtrics. After obtaining consent, participants completed the 43-item Tompkins Polarity Scale (1964). Participants indicated agreement with one of two statements presented (e.g., A. Human beings are basically evil. B. Human beings are basically good). Agreement was indicated as either, both or none. Scaled responses were scored on a humanistic or normativistic subscale, placing them into a “right” or “left” ideology. Participants then completed the 25-item Sentencing and Justice Goals Scale (McKee & Feather, 2008), which assess the sentencing goals and strategies used by individuals when forming judgments about the punishment and/or penalties for people who commit crimes. The Justice Goals Scale measures perceptions of community justice (e.g., With the right approach most offenders can be rehabilitated) on a scale of 1 (disagree) to 7 (agree). The Sentencing Goals Scale measures endorsement of the four goals of sentencing (e.g., To protect society from the offender) on a scale of 1 (strongly agree) to 7 (strongly disagree). The language of these scales was modified as suitable for a North American participant pool.

Participants then read the five scenarios detailed in the Appendix. Each scenario introduced the results of a psychological assessment endorsing non-criminal confinement of the offender because they pose a potential danger to society. Each scenario was similar in format and content, apart from the manipulated variable of type of offense. The order of presentation of each scenario was randomized to account for potential order effects.

After reading each scenario, participants were asked to respond to a series of dependent measures assessing the perceived fairness of the offender’s confinement, an appropriate length of confinement they would assign, their perception of the offender’s potential dangerousness, and assessments of which factors influenced their perceptions of the fairness of the offender’s confinement. They then rank-ordered the offenders’ perceived level of dangerousness from 1 (most dangerous) to 5 (least dangerous). Finally, participants were asked to report their demographic information (age, sex, race, education) and their relationship with the criminal and mental health industries. A debriefing followed.

RESULTS

Hypothesis Tests

In order to test our first hypothesis predicting differences in rank-ordering of perceptions of dangerousness, we conducted the non-parametric Friedman test. Our k-related samples included the rank ordering of dangerous (1 = most dangerous to 5 = least dangerous) on our five types of crime. Our findings were in the predicted direction: participants ranked the terrorist as most dangerous, followed by child pornographer (sex offender), bank robber, DUI, and disorderly conduct (see Table 1). Results indicated a significant difference in rank order of participants' report of the level of dangerousness associated with each crime: $\chi^2(4, N = 189) = 211.25, p < .001$. Multivariate post hoc comparisons revealed p values ranging from $p < .001$ to .023.

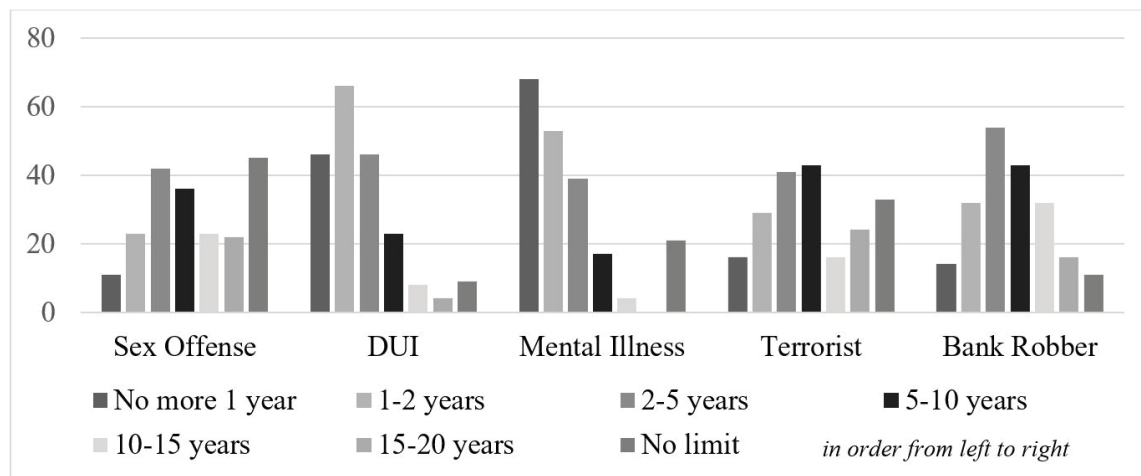
Table 1: Mean Rank Order of Perceptions of Dangerousness on Crime Type*

*Type of Crime	<i>N</i> (189)	<i>Mrank</i> (<i>SD</i>)
supporting a terrorist organization		2.14(1.26)
possession of child pornography		2.48(1.36)
robbing a bank		2.88(1.12)
crashing his car while driving under the influence	3.17(1.22)	
trespassing and threatening police officers		4.32(1.05)

* Each item: How dangerous do you believe (name of perpetrator)- arrested for . . .
1 = most dangerous – 5 = least dangerous

Similarly, the lengthiest confinement, on a scale of 1 = no more than one year to 7 = no limit on length of time, was assigned to the terrorist, followed by the sex offender: Wilks' Lambda = .522: $F(4, 198) = 45.35; p < .001$; partial eta squared = .48 (see Figure below).

Figure: Number of Participants Indicating Confinement Recommendations $N = 202$



We also observed considerable confidence in participants' assessments of risk of future harm. This item read: How confident are you regarding your belief that (the perpetrator) will be likely to cause future harm? Responses ranged from 1 = not at all confident to 7 = very confident. The mean response on this scale was greater than 5 for all five crimes, indicating high levels of confidence reported across all scenarios. Ratings of confidence for future dangerousness for the disorderly conduct offender ($M = 5.05$) differed significantly from all others (M s ranged from 5.66 to 5.84). Confidence in assessments of future dangerousness was greatest for the sex offender ($M = 5.84$): Wilks' Lambda = .769: $F(4, 197) = 14.78$; $p < .001$; partial eta squared = .23.

To test our second hypothesis that preventive detention would be perceived as the most reasonable form of treatment for the sex offender, participants were asked: Do you believe that it is fair for (the perpetrator) to be sent for treatment in a locked facility? Responses ranged from 1 = completely unfair to 7 = completely fair. A repeated measures MANOVA found significant differences on this measure: Wilks' Lambda = .688: $F(4, 198) = 22.49$; $p < .001$; partial eta squared = .31. As predicted, preventive detention was perceived as the most reasonable form of treatment for the child pornographer (sex offense) compared to the other types of crimes (see Table 2).

Table 2: Mean Differences on Perceptions of Preventive Detention - $N = 202$ for all cases

Type of Offender	M(SD)	*95% CI	
		Lower Bound	Upper Bound
Sex Offender	6.13(1.26)	5.959	6.309
Bank Robber	5.87(1.40)	5.677	6.066
Enemy Combatant	5.84(1.45)	5.639	6.034
Drunk Driver	5.56(1.48)	5.353	5.766
Trespass and threat	4.99(1.69)	4.756	5.224

DUI differed significantly from all other means: p values ranged from $< .001$ to .008

*Bonferroni adjustment applied to CI: 1 = not at all fair to 7 = completely fair

Similarly, concern about the need to protect the public was the most significant motivation for preventive confinement in connection with the sex offender. This item read: How much did the need to protect the public influence your position regarding the fairness of (perpetrator) sentence? Responses ranged from 1 = no influence at all to 5 = completely influenced. The mean for the sex offender was 4.18, was significantly higher than the DUI ($M = 3.91$) and disorderly conduct by a person with mental illness ($M = 3.39$): Wilks' Lambda = .732: $F(4, 197) = 18.06$; $p < .001$; partial eta squared = .27. Interestingly, despite the presence of mental illness, protection of the public was least influential in connection with the disorderly conduct crime, suggesting that the participants did not associate mental illness with dangerousness.

A similar pattern was observed in response to the item How much did the belief that people should be punished for their wrong-doing influence your position regarding the fair-

ness of (perpetrator's) sentence? Responses ranged from 1 = no influence at all to 5 = completely influenced: Wilks' Lambda = .624: $F(4, 198) = 29.84$; $p < .001$; partial eta squared = .38. Participants perceived the need to be punished (just deserts) as greater justification for preventive confinement for sex offenders ($M = 3.57$) compared to DUI ($M = 3.21$) and disorderly conduct ($M = 2.49$). Again, the responses to the disorderly conduct crime on this item differed significantly from all other types of crime.

Regression Analyses

In order to test the predictive ability of polarity scores on perceptions of just deserts for each type of offense (relevant to our third hypothesis), a series of multiple regression analyses (MRA) were conducted. For terrorism and sex offender, no significant difference was found between right-wing and left-wing participants on perceptions of desert. For DUI and bank robbery, right-wing participants were more likely to see just deserts as a justification for preventive confinement. Interestingly, subjects who scored higher on humanism endorsed a just deserts justification for preventive detention for the disorderly conduct/MI scenario, but those who endorsed normative beliefs did not. See Table 3.

Table 3: Polarity Scores as Predictors of Perceptions of "Just Deserts"

Type of Offender	Left-Wing β	Right-Wing β	Sig*	R^2	sr^2
Drunk Driver	ns	.212	.001	.046	.044
Mental Illness	.261	-.133	< .001/.054	.095	.067/.017
Bank Robber	ns	.193	.024	.037	.036

sr^2 = proportion of unique variance accounted for by significant predictors: $N = 201$

We also explored whether men and women differed in scores on the polarity measure. Independent samples t-test revealed women reported higher scores on left-wing indicators of the polarity scale: $t(179.88) = -4.668$, $p < .001$: $M = 34.21$ v. 30.15 , respectively. Scores ranged from 8.00 – 43.00 for left-wing, $M_{scale} = 31.97$, $SD = 6.61$. Scores ranged from 2.00 – 43.00 for right-wing, $M_{scale} = 21.46$, $SD = 7.56$.

Finally, we were interested in examining the relationships between the four sentencing goals (subscales of rehabilitation, retribution, deterrence and incapacitation) and perceptions of the need to protect the public in each of our crime scenarios. The question posed to our participants within each scenario read as follows: How much did the need to protect the public (from each of the five individuals) influence your sentencing decision (1 – not at all influence) to (7 completely influence). Importantly, rehabilitation was not correlated with perceptions of protecting the public within the context of our crime scenarios. The remaining sentencing goals however, were significantly correlated indicating the influence of each goal when considering the need to protect the public. Table 4 denotes our findings.

Table 4: Bivariate Correlations of Sentencing Goals and Perceptions of Need to Protect the Public

Sentencing Goal	Terrorist	Sex Offender	DUI	Mental Illness	Bank Robber
Retribution	-.33**	-.32**	-.26**	-.14*	-.19*
Rehabilitation	ns	ns	ns	ns	ns
Incapacitation	-.36**	-.32**	-.32**	ns	-.21**
Deterrence	-.29**	-.25**	-.29**	ns	-.24**

(N = 202) * $p < .05$, ** $p < .001$. Lower values on the subscales indicate greater agreement with the construct.

DISCUSSION

Our first hypothesis was largely supported. We observed a “crime hierarchy” defined as an ordinal ranking of dangerousness (Robinson & Kurzban, 2007; Slobogin & Brinkley-Rubinstein, 2013). A majority of participants reported the enemy combatant (terrorist) as the most dangerous offender, followed by sex offender, bank robber, drunk driver, and the individual with mental illness who engaged in disorderly conduct. Interestingly, the individual with mental illness was considered to be the least dangerous. This finding conflicts with research indicating that the public perceives mentally ill individuals as dangerous (Phelan & Link, 1998). It is consistent however, with the notion that desert heavily influences perceptions of danger. Our findings indicate that a crime hierarchy may influence opinions concerning need for preventive detention to some degree and also reflect that the public is comfortable with unlimited preventive detention for mentally ill individuals, perhaps so that these individuals may be able to receive treatment.

Our second hypothesis was also supported. As predicted, participants reported significantly more support for preventive confinement in the sex offender condition compared to all other conditions. In fact, participants endorsed greater support for non-criminal confinement for the sex offender over other types of crime across all dependent measures except for the item assessing need for treatment. Despite the fact that the terrorism suspect was judged to be the most dangerous, participants were more likely to endorse preventive detention for the sex offender. This result supports the research which finds that sex offenders are among the most villainized criminal offenders, possibly due to moral outrage (LaFond, 2005; Quinn et al., 2004; Socia & Harris, 2016).

Our third hypothesis was partially confirmed. There were no observed difference between the Tompkins (1964) polarity measures and desert measures for the terrorist and sex offender: both left-wing humanistic and right-wing normativistic participants endorsed preventive detention. This may be explained by the notion that the nature of these crimes supersedes political ideology. Right-wing polarity measures were only predictive of just deserts for the drunk driver and bank robber, two of the three scenarios ranked as less dangerous. Thus, participants with right-wing ideologies were more likely to view incapacitation

tation and/or punishment as appropriate for these less dangerous offenders. Interestingly, left-wing polarity was also linked to endorsement of preventive detention with the mentally ill suspect. It is possible that in this case, the participants viewed preventive detention as being connected to treatment of the mentally ill. Additionally, our hypothesis which stated that those with high scores on the Justice Goals Scale specific to retribution would be likely to rate preventive detention as meeting just desert was not confirmed. This suggests that the specific goals of sentencing do not have a significant influence on perceptions of preventive detention. In fact, incapacitation and deterrence were significantly correlated in all conditions except for the Discordly Conduct/MI scenario.

Limitations and Future Research

The current study experienced some of the same limitations of research conducted via online platforms,. Importantly, we acknowledge that written scenarios are limited in their ability to capture specific features or aspects of preventive detention in a real-life circumstance. In addition, although efforts were made to screen participants for appropriate inclusion into the study, there is no ability to completely ensure the veracity of participant responses. Additionally, our scenarios as well as our dependent measures were developed to assess perceptions of the fairness of preventive detention. With this in mind, our study materials were not presented as a trial transcript designed to assess juror decision-making. Judges or special legal panels, rather than members of the public or jurors, often decide cases involving some form of preventive detention.

Importantly, our scenarios were designed to be comparable with respect to crime severity. To facilitate this none of the scenarios involved bodily injury to victims. In this context, we observed findings in one scenario that were not expected nor measured. Specifically, unlike the other scenarios, the disorderly conduct/MI scenario involved more than one potential charge, including resisting arrest. Participants may have viewed this charge as an aggressive act. This may explain why participants who scored higher on the retribution subscale were more likely to endorse preventive detention for the mentally ill individual as motivated by public safety concerns. The generalizability of our findings may be limited because actual cases involving preventive detention often encompass the presence of risk of serious harm to the public. With each of these limitations in mind, we are confident that our research design and methodology appropriately tested our hypotheses and resisted validity issues present in similar research paradigms. Future researchers should further explore this crime hierarchy, comparing different levels of severity to determine if ordinal ranking varies significantly as severity of crimes increase. Future research should also continue to examine individual difference variables that could influence decision-making in this type of paradigm.

Conclusion

Our findings contribute to a growing body of literature examining perceptions of the justifiability of non-criminal commitment for different types of crime, in addition to the sex offenses that are the dominant focus of special preventive detention statutes. Although our sex offense scenario was a low-risk, non-contact offense, sex offenders seem to be consistently perceived as more dangerous compared to all but the terrorist. Importantly,

participants endorsed involuntary confinement for the terrorist and sex offender conditions regardless of political attitudes. Across all scenarios participants endorsed involuntary detention for each type of offender though the justifications for such detention varied by offense type. The length of time participants felt would be appropriate for the crimes varied greatly and as expected, many participants believed that unlimited detention was appropriate for the sex offender and the terrorist. Interestingly, participants also believed that unlimited detention was appropriate for the mentally ill individual. As stated earlier, the additional charges present in this scenario as well as a perception that a mentally ill individual requires ongoing treatment provides two potential explanations for this observation. Our study suggests that the American public has a high tolerance for non-criminal preventive detention across offense type, even for less-violent crimes. In addition, participants may endorse confinement regardless of specific justification or sentencing goal.

REFERENCES

- Appelbaum, P. S. (1990). Civil commitment from a systems perspective. *Law and Human Behavior*, 16, 61-74. doi:10.1007/BF02351049
- Ashworth, A. (2005). *Sentencing in Criminal Justice* (4th ed.) Cambridge: Cambridge University Press.
- Ashworth, A., & Player, E. (2005). The Criminal Justice Act 2003: The sentencing provisions. *Modern Law Review*, 68, 822-838. doi: 10.1111/j.1468-2230.2005.00562.x
- Austin, W. (1979). The concept of desert and its influence on simulated decision makers' sentencing decisions. *Law and Human Behavior*, 3, 163-187. doi.org/10.1007/BF01039789
- Authorization for Use of Military Force Against Terrorists, Pub. L. No. 107-40, 115 Stat. 224 (2001).
- Bickle, A. (2008). The dangerous offender provisions of the Criminal Justice Act 2003 and their implications for psychiatric evidence in sentencing violent and sexual offenders. *The Journal of Forensic Psychiatry & Psychology*, 19, 603-619. doi: 10.1080/1478994080191234
- Blais, J., & Bonta, J. (2015). Tracking and managing high risk offenders: A Canadian initiative. *Law and Human Behavior*, 39, 253-265. doi: 10.1037/lhb0000109
- Blume, J. H., Garvey, S. P., & Johnson, S. L. (2001). Future dangerousness in capital cases: Always "at issue". *Cornell Law Review*, 86, 397-410.
- Boscarino, J. A., Figley, C. R., & Adams, R. E. (2003). Fear of terrorism in New York after the September 11 terrorist attacks: implications for emergency mental health and preparedness. *International Journal of Emergency Mental Health*, 5(4), 199-209.
- Bureau of Justice Statistics. (2003). *Recidivism of sex offenders released from prison in 1994*. Washington, DC: U.S. Department of Justice.
- Callahan, L., Mayer, C., & Steadman, H. J. (1987). Insanity defense reform in the United States – post-Hinckley. *Mental and Physical Disability Law Reporter*, 11, 54-59.
- Carroll, J. S., Perkowitz, W. T., Lurigio, A. J., & Weaver, F. M. (1987). Sentencing goals, causal attributions, ideology and personality. *Journal of Personality and Social Psychology*, 52, 107-118. doi: 10.1037//0022-3514.52.1.107
- Cavadino, M., & Dignan, J. (1997). Repatriation, retribution, and rights. *International Review of Victimology*, 4, 233-253. doi: 10.1177/026975809700400401
- Christopher, P. P., Pinals, D. A., Stayton, T., Sanders, K., Blumberg, L. (2015). Nature and utilization of civil commitment for substance abuse in the United States. *Journal of the American Academy of Psychology and the Law*, 43, 313-320.
- Civic Impulse (2018). H.R. 1540 — 112th Congress: National Defense Authorization Act for Fiscal Year 2012. Retrieved from <https://www.govtrack.us/congress/bills/112/hr1540>
- Cole, D. (2014). The difference prevention makes: Regulating preventive justice. *Georgetown Law Faculty Publications and Other Works*, 1354. doi: 10.1007/s11572-013-9289-7.

- Costanzo, S., & Costanzo, M. (1994). Life or death decisions: An analysis of capital jury decision making under the special issues sentencing framework. *Law and Human Behavior*, 18, 151-168. doi: 10.1007/BF01499013
- Criminal Justice Act (2003). c. 44 (Eng.)
- Darley, J. M., & Pittman, T. S. (2003). The psychology of compensatory and retributive justice. *Personality and Social Psychology Review*, 7, 324-336. doi: 10.1207/S15327957PSPR0704_05
- Duff, R. A., & Garland, D. (1994). Thinking about punishment. In R.A. Duff, & D. Garland. (eds.), *A Reader on Punishment* (pp. 1-37). Oxford University Press: Oxford.
- Executive Order 9066. 3 C.F.R. n/d (1942).
- Feldman, N. (2016). Why Korematsu is not a precedent. *New York Times*. Retrieved from: <https://www.nytimes.com/2016/11/21/opinion/why-korematsu-is-not-a-precedent.html>
- Frost, B., & Wellford, C. (1981). Punishment and sentencing: Developing guidelines empirically from principals of punishment. *Rudgers Law Review*, 33, 799-837.
- Garvey, S. P. (1998). Aggravation and mitigation in capital cases: What do jurors think? *Columbia Law Review*, 98, 1538-1576.
- Graham, J., Haidt, J., & Nosek, B. A. (2009). Liberals and conservatives rely on different sets of moral foundations. *Journal of Personality and Social Psychology*, 96, 1029-1046. doi:10.1037/a0015141
- Grasmick, H. G., Davenport, E., Chamlin, M. B., & Bursik, R. J. (1992). Protestant fundamentalism and the retributive doctrine of punishment. *Criminology*, 30, 21-46. doi: 10.1111/j.1745-9125.1992.tb01092.x
- Hedges v. Obama, 2nd U.S. Circuit Court of Appeals, No. 12-3176 (2013)
- Helmus, L., Hanson, R. K., Thornton, D., Babchishin, K. M., & Harris, A. J. R. (2012). Absolute recidivism rates predicted by Static-99R and Static-2002R sex offender risk assessment tools vary across sample: A meta-analysis. *Criminal Justice and Behavior*, 39, 1148-1171. doi: /10.1177/0093854812443648
- Hogan, R., & Emler, N. P. (1981). Retributive justice. In M. J. Lerner & S. C. Lerner (Eds.), *The justice motive in social behavior*. New York: Plenum Press.
- Huddy, L., Khatid, N., & Capelos, T. (2002). Trends: Reactions to the terrorist attacks of September 11, 2001. *Public Opinion Quarterly*, 66, 418 - 450. doi:10.1086/341395
- Huddy, L., Feldman, S., Taber, C., & Lahav, G. (2005). Threat, anxiety, and support of antiterrorism policies. *American Journal of Political Science*, 49, 593 – 608. doi:10.1111/ajps.2005.49.issue-3
- Janus, E. S. (2003). Legislative responses to sexual violence. *New York Academy of Sciences*, 989, 247-264. doi: 10.1111/j.1749-6632.2003.tb07310.x
- Kansas v. Hendricks, 521 U.S. 346 (1997).
- Kansas v. Crane, 534 U.S. 407 (2002).
- Kim, J. (2016). The effects of collective anger and fear on policy support in response to terrorist attacks. *The Journal of Social Psychology*, 156, 455-468. doi: 10.1080/00224545.2015.111966.
- Korematsu v. United States, 323 U.S. 214 (1944).
- LaFond, J. Q. (2005). Preventing sexual violence: How society should cope with sex offenders. Washington, DC: American Psychological Association.
- Lehman J., & Phelps S. (2004). *West Encyclopedia of American Law* (2nd ed.). Farmington Hills, MI:Gale.
- McKee, I. R., & Feather, N. T. (2008). Revenge, retribution, and values: Social attitudes and punitive sentencing. *Social Justice Research*, 21, 138-163. doi: 10.1007/s11211-008- 0066-z
- Melton, G. B., Petrila, J., Poythress, N. G., Slobogin, C., Otto, R. K., Mossman, D., & Condie, L. O. (2017). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers. (4th ed). New York: Guilford Press.
- National Defense Authorization Act (2012).
- Payne, B. K., Gainey, R. R., Triplett, R. A., & Danner, M. J. (2004). What drives punitive beliefs? Demographic characteristics and justifications for sentencing. *Journal of Criminal Justice*, 32, 195-206. doi: 10.1016/j.jcrimjus.2004.02.007
- Public Health Service Act (1944). USA 42 U.S. Code § 264.

- Phelan, J. C., & Link, B. G. (1998). The growing belief that people with mental illness are violent: The role of the dangerousness criterion for civil commitment. *Social Psychiatry and Psychiatric Epidemiology*, 33, 7-12. doi: 10.1007/s001270050204
- Quinn, J. F., Forsyth, C. J., & Mullen-Quinn, C. (2004). Societal reaction to sex offenders: A review of the origins and results of the myths surrounding their crimes and treatment amenability. *Deviant Behavior*, 25, 215-232. doi: 10.1080/01639620490431147
- Robinson, P. H. (2008). Competing conceptions of modern desert: Vengeful, deontological, and empirical. *Cambridge Law Journal*, 67, 145-175. doi:10.1017/S000819730800010x
- Robinson, P. H., & Kurzban, R. (2007). Concordance and conflict in intuitions of justice. *Minnesota Law Review*, 91, 1829-1907.
- Robinson, P. H., & Williams, T. S. (2018). Insanity defense. In P. H. Robinson & T. S. Williams (Eds.). *Mapping American Criminal Law: Variations across the 50 States*. University of Pennsylvania Law School, Public Law Research Paper, 17.
- Sample, L. L., & Bray, T. M. (2003). Are sex offenders dangerous? *Criminology and Public Policy*, 3, 59-82. doi: 10.1111/j.1745-9133.2003.tb00024.x
- Sample, L. L., & Bray, T. M. (2006). Are sex offenders different? An examination of rearrest patterns. *Criminal Justice Policy Review*, 17, 83-102. doi: 10.1177/0887403405282916
- Silver, J. R., & Silver, E. (2017). Why are conservatives more punitive than liberals? A moral foundation approach. *Law and Human Behavior*, 41, 258-272. doi: 10.1037/lhb0000232
- Sinclair, S. J., & Antonius, D. (2012). *The Psychology of Terrorism Fears*. Oxford University Press. Retrieved from: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195388114.001.0001/acprof-9780195388114>
- Skitka, L. J., Bauman, C. W., & Mullen, E. (2004). Political tolerance and coming to psychological closure following the September 11, 2001, terrorist attacks: An integrative approach. *Personality and Social Psychology Bulletin*, 30, 743 – 756. doi:10.1177/014616720426396
- Slobogin, C. (2011). Prevention as the primary goal of sentencing: the modern case for indeterminate dispositions in criminal cases. *San Diego Law Review*, 48, 1227-1171.
- Slobogin, C., & Brinkley-Rubinstein, L. (2013). Putting desert in its place. *Stanford Law Review*, 65, 77-135.
- Slobogin, C. (2016). Preventive justice: A paradigm in need of testing. American Psychology-Law Society Distinguished Contribution Lecture. Lecture presented at the annual meeting of the American Psychology and Law Society, Atlanta, GA.
- SMART Office. (2014). Sex offender management assessment and planning initiative. (NCJ 247059). Washington, DC: Author. Retrieved from: <https://www.smart.gov/SOMAPI/pfv.html>
- Socia, K. M., & Harris, A. J. (2016). Evaluating public perceptions of the risk presented by registered sex offenders: Evidence of crime control theater? *Psychology, Public Policy, and Law*, 22, 375-385. doi:10.1037/law0000081
- Stone, W. F. (1986). Personality and ideology: Empirical support for Tomkins' Polarity Theory. *Political Psychology*, 7, 689-708. doi: 10.2307/3791209
- Stone, W. F., & Schaffner, P. E. (1997). Tompkins Polarity Scale: Recent developments. Paper presented at the 20th annual meeting of the International Society of Political Psychology, Krakow, Poland. Retrieved from: <http://www.tomkins.org/wp-content/uploads/2014/07/polarityscale.pdf>
- Testa, M., & West, S. G. (2010). Civil commitment in the United States. *Psychiatry*, 7(10), 40-60. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3392176/>
- Tomkins, S. S. (1963). Left and right: A basic dimension of ideology and personality. In R. W. White (Ed.). *The study of lives: Essays in honor of Henry A. Murray*. Chicago: Aldine-Atherton
- Tomkins, S. S. (1964). *The polarity scale*. New York: Springer.
- Tomkins, S. S. (1965). Affect and the psychology of knowledge. In S.S. Tomkins & C. Izard (Eds.). *Affect, Cognition, and Personality*. (pp 72-97). New York: Springer.
- Tonry, M. (2011). Making peace, not a desert: Penal reform should be about values not justice reinvestment. *Criminology and Public Policy*, 10, 637-649. doi: 10.1111/j.1745-9133.2011.00757.x
- Tonry, M., & Petersilia, J. (1999). Prisons research at the beginning of the 21st century. *Crime and Justice: A Review of Research*, 26, 1-14.

- Tyler, T. R., & Boeckmann, R. J. (1997) Three strikes and you are out, but why? The psychology of public support for punishing rule breakers. *Law and Society Review*, 31, 237-265. doi: 10.2307/3053926
- United States v. Comstock, 560 U.S. 126, (2010).
- Unnever, J. D., & Cullen, F. T. (2007). The racial divide in support for the death penalty: Does White racism matter? *Journal of Research in Crime and Delinquency*, 43, 169 - 197.
- Unnever, J. D., & Cullen, F. T. (2009). Empathetic identification and punitiveness: A middle-range theory of individual differences. *Theoretical Criminology*, 13, 283-312. doi: 10.1177/1362480609336495

Date Received: 03/2019

Date Accepted: 07/2019

Suggested citation: Gamache, K., Zaitchik, M.C., Platania, J. & Rieger, D.J. (2019). Perceptions of Just Deserts in the Context of Type of Offense. [Electronic Version]. *Applied Psychology in Criminal Justice*, 15(2), 141-156.

APPENDIX

Experimental Scenarios

Tyler Bennet was arrested for supporting a terrorist organization. Federal authorities have been monitoring Tyler's activity due to an ongoing investigation. The authorities discovered that Tyler had been sending radio equipment and other electronic components, through the mail to known terrorist operatives. An expert conducted a psychological assessment on Tyler and believes that he is of high risk to engage in dangerous behavior in the future. Because of this, the state is concerned that Tyler will be a danger to society in the future and wants to force Tyler to stay in a locked treatment facility until he is no longer a threat to society.

Nelson Vermith has been arrested for possession of child pornography. Nelson had utilized his home computer to download child pornography. His computer's ISP address was being monitored by the FBI's cyber-crime division. After months of monitoring by law enforcement, Nelson was arrested for possession of thousands of data files of child pornography. An expert conducted a psychological assessment of Nelson and believes that he is of high risk to offend against children. Because of this, the state is concerned that Nelson will be a danger to society in the future and wants to force Nelson to stay in a locked treatment facility until he is no longer a threat to society.

George Connor was arrested for robbing a bank. During this act, George pointed a gun at a teller, demanded money and threatened to kill her if she did not comply. The teller was not harmed and George was quickly arrested after he left the bank. An expert conducted a psychological assessment on George and believes that he is of high risk to engage in dangerous behavior in the future. Because of this, the state is concerned that George will be a danger to society in the future and wants to force George to stay in a locked treatment facility until he is no longer a threat to society.

Jack Reislen has been arrested for drunk driving. Jack was driving with a blood alcohol level of .19, more than twice the legal limit for his state. While driving, Jack smashed into several cars that were parked on the road. Jack has a history of drunk driving with pre-

vious arrests for 'Driving While Under the Influence'. An expert conducted a psychological assessment on Jack and believes that he is of high risk to engage in dangerous behavior in the future. Because of this, the state is concerned that Jack will be a danger to society in the future and wants to force Jack to stay in a locked treatment facility until he is no longer a threat to society.

Marcus Strimark was arrested for trespassing, disorderly conduct and resisting arrest. The incident involved Marcus walking through the backyards of his neighbors and refusing to leave. He stated that he believed he was in his own yard. When confronted by the police, Marcus became verbally aggressive and threatening. Marcus has a history of schizophrenia, a serious mental illness. An expert conducted a psychological assessment on Marcus and believes that he is of high risk to engage in dangerous behavior in the future. Because of this, the state is concerned that Marcus will be a danger to society in the future and wants to force Marcus to stay in a locked treatment facility until he is no longer a threat to society.